

# Regulatory Committee

Date: **Tuesday, 29th January, 2008**

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Time: **2.00 p.m.**

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Place: **The Council Chamber, Brockington, 35  
Hafod Road, Hereford**

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Notes: Please note the **time, date** and **venue** of the meeting.

*For any further information please contact:*

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**County of Herefordshire  
District Council**



# AGENDA

## for the Meeting of the Regulatory Committee

To: Councillor P Jones CBE (Chairman)  
Councillor JW Hope MBE (Vice-Chairman)

Councillors CM Bartrum, DJ Benjamin, ME Cooper, PGH Cutter, SPA Daniels,  
JHR Goodwin, R Mills, A Seldon and DC Taylor

### 1. APOLOGIES FOR ABSENCE

To receive apologies for absence.

### 2. NAMED SUBSTITUTES (IF ANY)

To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.

### 3. DECLARATIONS OF INTEREST

To receive any declarations of interest by Members in respect of items on the Agenda.

The Council's Members' Code of Conduct requires Councillors to declare against an Agenda item(s) the nature of an interest and whether the interest is personal or prejudicial. Councillors have to decide first whether or not they have a personal interest in the matter under discussion. They will then have to decide whether that personal interest is also prejudicial.

A personal interest is an interest that affects the Councillor more than most other people in the area. People in the area include those who live, work or have property in the area of the Council. Councillors will also have a personal interest if their partner, relative or a close friend, or an organisation that they or the member works for, is affected more than other people in the area. If they do have a personal interest, they must declare it but can stay and take part and vote in the meeting.

Whether an interest is prejudicial is a matter of judgement for each Councillor. What Councillors have to do is ask themselves whether a member of the public – if he or she knew all the facts – would think that the Councillor's interest was so important that their decision would be affected by it. If a Councillor has a prejudicial interest then they must declare what that interest is and leave the meeting room.

### 4. MINUTES

To approve and sign the Minutes of the meeting held on 18th December, 2007.

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## **COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL**

**BROCKINGTON, 35 HAFOD ROAD, HEREFORD.**

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COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

**MINUTES of the meeting of Regulatory Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Tuesday, 18th December, 2007 at 2.00 p.m.**

**Present:** Councillor JW Hope MBE (Chairman)

**Councillors:** CM Bartrum, DJ Benjamin, ME Cooper, PGH Cutter, JHR Goodwin, R Mills and A Seldon

**69. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillor Mrs SPA Daniels, Brig P Jones and DC Taylor

**70. NAMED SUBSTITUTES (IF ANY)**

There were no named substitutes present at the meeting.

**71. DECLARATIONS OF INTEREST**

There were no declarations made at the meeting.

**72. MINUTES**

**RESOLVED: That the Minutes of the meeting held on 20th November, 2007 be approved as a correct record and signed by the Chairman**

**73. BRIEFING ON STREET TRADING**

The Trading Standards Manager and the Licensing Officer (Street Trading) gave a presentation to the Committee about the work of the Council's Street Trading Panel which helped to manage the control of street trading across the county. They outlined the remit of the Panel under the provisions of the Local Government (Miscellaneous Provisions) Act 1982, relating to street trading. They advised that the Panel met approximately every six weeks and was comprised of representatives from Trading Standards, Environmental Health, Highways and Transportation, Licensing, Economic Development, Markets and Fairs, and Legal Services. The Hereford City Manager also attended in an ex-officio capacity. A policy was in place for the administration and enforcement of street trading which was not permitted legally to be used a method of raising excess revenue service within Herefordshire. Applications for street trading consents were submitted to the Panel and were considered on their individual merits, taking into account a variety of factors including:

- existing trader/product supply in the vicinity
- precedents already set by the Panel; and
- suitability of proposed stall/unit/product range

He The Trading Standard Manager stressed the importance of diversity of product range with regard to Street Trading in High Town and that traders selling identical products did not assist in achieving this aim. Committee was given a Street Trading

information pack to aid it about street trading issues.

#### 74. PROCEDURAL ARRANGEMENTS

The Committee noted the procedural arrangements for hearing appeals to ensure that the laws of natural justice were followed to give a fair hearing for applicants and to the Licensing Officers.

#### 75. HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE LICENSING - DEVIATION BY DIANA KAY KINSEY FROM VEHICLE LICENCE CONDITION NUMBER 2.1

A report was presented by the Licensing Officer about an application for a private hire vehicle licence in respect of a vehicle which was more than two years old. She explained the Council's licensing policy in respect of such vehicles and advised that the DK Travel had been obliged to submit her application for a vehicle licence because of a recent change in legislation. Previously it had not been necessary for DK Travel to be licensed because the company was a long established local business which provided transfers to Airports as an additional service to its Travel Agent activities. One of the proprietors, Mrs Kinsey, addressed the Committee and said that the vehicle was solely used for this purpose and that the company was not involved in any private hire or hackney carriage activities. The change in legislation had meant that the service provided by such proprietors now fell within the hackney carriage/private hire regulations.

Having considered all the circumstances regarding the application, the Committee noted that the application was from a well run reputable company with a high standard of vehicle which was only necessitated by a change in legislation. The Committee also appreciated the fact that Mrs Kinsey had submitted an application as soon as she had been made aware of the new requirements. It was agreed that because of the particular circumstances, an exception could be made to the Council's licensing policies and that the application could be granted.

#### **RESOLVED THAT:**

**An application from Mrs D Kinsey of DK Travel to deviate from the standard condition number 2.1, for a new application for a private hire vehicle licence, be granted**

#### 76. TO REVIEW LICENSED HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES THAT HAVE BEEN MODIFIED: LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976, TOWN POLICE CLAUSES ACT 1847

The Licensing Manager presented a report about vehicles which had been modified for hackney carriage and private hire use. She said that it had been brought to her attention that certain vehicles originally manufactured as panel vans had been converted to mini-buses and licensed for hackney carriage/private hire. Outwardly the vehicles looked like any other minibus but doubts had been raised about their structural safety, seating anchor points and braking systems. Their registration documents still specified them as panel vans and there were no test certificates to establish that the work had been safely carried out. Advice from the Department of Transport was that the vehicles would need to be tested at one of its inspection centres and obtain the necessary safety certification. The DVLA would also need to be notified about the modifications and the vehicle registration documents altered accordingly. She said that there was also a further 70 purpose-built vehicles which

had subsequently been modified for wheelchair access which would need to be subject to Department of Transport and DVLA inspection and certification.

The Committee discussed the situation and noted that the majority of the converted panel vans were used on school and social services contract work. The Committee concurred with the view of the Licensing Manager that because of the safety concerns, the licences should be suspended until such time as the Council was provided with confirmation that the vehicles had complied with the requirements of the Department of Transport and the DVLA. It was agreed that the suspension would take place with effect from 6:00 pm on 21st December, 2007. The Licensing Manager said that she would notify by telephone those affected by the suspension as soon as possible after the meeting. In the case of the purpose-built vehicles adapted for wheelchair accessibility, there were not the same urgent safety issues involved and more time could be allowed for the proprietors to comply with the requirements of the Department of Transport and the DVLA. It was decided that two months from the date of the meeting should be allowed for proprietors to comply with the requirements.

#### **RESOLVED THAT**

- (i) **in the case of panel vans converted to minibuses, all vehicles that have not notified DVLA of the modification be suspended until such time the registration has been issued with the modification added, and the vehicles have been tested and pass the requirements of the Department of Transport in accordance with the Voluntary Single Vehicle (enhanced) Approval**
- (ii) **in the case of factory manufactured wheelchair vehicles without M1 standard, the following be required within two months of the date of this meeting:-**
  - a) **the vehicle proprietors provide evidence to the satisfaction of the Licensing Manager that the wheelchair accessible facilities are safe, and**
  - b) **the Local Licensing Authority arrange for its test centre to carry out checks of the operation, security and condition of the disabled access facilities.**

#### **77. AMENDMENT HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE CONDITIONS IN RELATION TO MODIFIED VEHICLES: LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976, TOWN POLICE CLAUSES ACT 1847**

The Licensing Manager presented a report about the suggested implementation of revised vehicle licence conditions to deal with the problem of panel vans which have been converted to minibuses for private hire or hackney carriage use, as outlined in the previous item (minute No 77). The Committee agreed with the proposals which were put forward by the Licensing Manager.

#### **RESOLVED**

**that the Council's private hire & hackney carriage vehicle licence conditions be revised so that:-**

- (i) **for vehicles that have been modified**

- (a) in order to accept an application to licence the vehicle, any modification must be listed on the Registration Document in accordance with Road Traffic Legislation;
  - (b) the vehicle must be registered as a passenger vehicle;
  - (c) If there is a structural modification to the vehicle, the vehicle shall have a satisfactory test certificate issued by DVLA to show that it complies with the Road traffic (construction and use) Regulations 1986, or have a Voluntary Single Vehicle Approval (enhanced) certificate tested by VOSA or an equivalent test certificate as agreed by the Local Licensing Authority;
  - (d) any modification must be notified to DVLA and the registration document amended accordingly prior to submission for a licence; and
- (ii) no vehicle other than one originally manufactured for the purpose of carrying people will be accepted as part of an application for a new hackney carriage/private hire vehicle.

#### **EXCLUSION OF THE PUBLIC AND PRESS**

In the opinion of the Proper Officer, the following items will not be, or are likely not to be, open to the public and press at the time they are considered.

**RESOLVED:** that under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below.

**These items disclose information relating to any particular applicant for or recipient of or former recipient of, any service provided by the authority.**

**78. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE - TO DETERMINE A DUAL DRIVERS LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

The Licensing Manager referred to agenda item No. 10 and provided the Committee with the circumstances which had given rise to the need for an application for a dual Hackney Carriage/Private Hire driver's licence being referred to the Committee. The applicant provided the Committee with details of the circumstances which had given rise to him receiving a conviction and the reasons why he felt that he should be allowed to become a licence holder.

Having considered all of the facts put forward by the Licensing Officer and the applicant, the Committee was satisfied that the applicant was a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and that he should be granted a licence.

**79. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE - TO DETERMINE A DUAL DRIVERS LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

The Licensing Officer referred to agenda item No. 11 and provided the Committee with the circumstances which had given rise to the need for an application for a dual Hackney Carriage/Private Hire driver's licence being referred to it. The applicant was not present at the meeting.

Having considered all of the facts put forward by the Licensing Officer and in the application submitted by the applicant, the Committee was not satisfied that he was a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and that he should not be granted a licence. The Committee also decided that in future it would only consider applications when the applicant was present, and that the Licensing Manager should arrange for the guidance which was issued to applicants to be revised accordingly.

The meeting ended at 3.50 p.m.

**CHAIRMAN**



## **REVIEW OF THE LICENSING POLICY AND CUMULATIVE IMPACT POLICY FOR COMMERCIAL ROAD AREA OF HEREFORD CITY - LICENSING ACT 2003 AND GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003**

**Report By: HEAD OF ENVIRONMENTAL HEALTH AND TRADING  
STANDARDS**

### **Wards Affected:**

County-wide

### **Purpose**

1. (a) To review the Herefordshire Council licensing policy in respect to carrying out its functions under the Licensing Act 2003 (Appendix 1).
- (b) To review the special licensing policy for the cumulative impact of premises in the Commercial Road area of Hereford City.

### **Law**

2. Section 4 of the Licensing Act 2003 requires the licensing authority to carry out its functions under the Act with a view to promoting the following licensing objectives:-
  - a) the prevention of crime and disorder;
  - b) public safety;
  - c) the prevention of public nuisance
  - d) the protection of children from harm.
3. Section 5 of the Licensing Act 2003 requires the local authority to determine every three years its policy with respect to the exercise of its licensing functions and publish a statement of that policy before the beginning of the period. The last licensing policy was reviewed on 14 December 2004.
4. Before determining the policy the licensing authority must consult –
  - a) The chief officer of police for the licensing authority's area.
  - b) The fire authority for that area,
  - c) Such persons as the licensing authority considers to be representative of holders of premises licences issued by that authority.
  - d) Such persons as the licensing authority considers to be representative of holders of club premises certificates issued by that authority,

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Further information on the subject of this report is available from Suzanne Laughland, Licensing Manager on (01432) 261675

- e) Such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority, and
  - f) Such other persons as the licensing authority considers to be representative of businesses and residents in its area.
5. Section 182 of the Act requires the Secretary of state to issue guidance for licensing authorities on the discharge of their functions under the Act.
  6. In addition of section 4 the licensing authority must have regard to the guidance issued buy the Secretary of State under section 182 of the Act. The requirement is therefore binding on all licensing authorities to that extend. However, it is recognised that the guidance can not anticipate every scenario or set of circumstances that may arise and so long as the guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. When doing so, licensing Authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken. (*Guidance issued under section 182 of the licensing Act 2003 Para 2.3*)

### **Cumulative impact policy.**

7. "Cumulative impact" is not specifically mentioned in the Act but means in the guidance the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. For example, the potential impact on crime and disorder or public nuisance on a town or city centre is a large concentration of licensed premises in that part of the local licensing authority area. The cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for a licensing authority to consider in developing its policy statement.
8. The steps to be followed in consideration whether to adopt a special policy within the statement of licensing policy are:
  - Identification of concern about crime and disorder or public nuisance;
  - Consideration of whether it can be demonstrated that crime and disorder and nuisance are arising and are caused by the customers of licensed premises, and if so identifying the area from which problems are arising and the boundaries of that area; or that the risk factors are such that the area is reaching a point when a cumulative impact is imminent;
  - Consultation with those specified in section 5 of the act (as stated above);
  - Subject to that consultation, inclusion of a special policy about future premises licence or club premises certificate applications from that area within the terms of the guidance in the statement of licensing policy;
  - Publication of the special licensing policy as part of the licensing policy.
9. The effect of adopting a special policy of this kind is to create a rebuttable presumption that applications for new premises licences or club premises certificates or material variations will normally be refused, if relevant representations to that effect are received, unless it can be demonstrated that the operation of the premises involved will not add to the cumulative impact already being experienced.

10. West Mercier Police authority made representations that they wished the Commercial Road area of Hereford City to remain the subject of a cumulative impact special licensing policy. (Appendix 2).

### **Consultation.**

11. The chief officer of police for West Mercier police Authority was consulted along with the licensing officer and policy officer.
12. The chief fire officer for Hereford and Worcester fire authority was consulted along with the policy officer.
13. All licence holders were written to notifying them of the review process.
14. All the elected members were sent a copy of the policy for their comments.
15. All parish councillors were sent a letter informing them of the licensing policy consultation process and inviting them to make comments.
16. A public notice was published in all the local newspapers inviting comments.
17. The policy, West Mercia Police Authority cumulative impact statement and a guidance document was published on Herefordshire Councils website.
18. The policy was sent to national trade organisations and presentations were made to local trade organisations and representative groups including licensing solicitors.
19. All comments received were collated and where appropriate changes were made to the licensing policy.

### **Options**

- **To adopt the licensing policy with the special policy for the Commercial Road area.**
- **To adopt the licensing policy without the special licensing policy.**
- **To come to some other conclusion.**



## SETTING OF FEES IN RESPECT OF TEMPORARY USE NOTICES IN ACCORDANCE WITH REGULATION 7 – THE GAMBLING ACT 2005 (TEMPORARY USE NOTICES) REGULATIONS 2007

**Report By: HEAD OF ENVIRONMENTAL HEALTH AND TRADING STANDARDS**

### **Wards Affected:**

County-wide

### **Purpose:**

1. The purpose of this report is for the Regulatory Committee to set the level of fees to be charged for Temporary Use Notices (TUNS) given under Part 9 of the Gambling Act 2005.

### **Law:**

2. Section 212 allows the District Council to set its' own fees in respect of the Gambling Act. However any fee set must not exceed the maximum fee set by the Government.
3. 'Council' delegated this function to the Regulatory Committee at their meeting on 25th May 2007.
4. The Gambling Act 2005 (Temporary Use Notices) Regulations 2007 states: -

### **Fees in connection with temporary use notices**

7.—(1) The fee payable under section 219(3)(b) of the Act on giving a temporary use notice shall be of such amount not exceeding £500 as may be determined by the licensing authority to whom the notice is given.

(2) The fee payable under section 227(6)(a) of the Act for the replacement of an endorsed copy of a temporary use notice—

(a) where the licensing authority responsible for issuing the copy of the notice is in England or Wales, shall be of such amount not exceeding £25 as the licensing authority may determine;

### **Background Information**

5. The Gambling Act 2005 (Temporary Use Notices) Regulations 2007 were laid before parliament and came into force on 1 December 2007.
6. A temporary use notice (TUN) may only be granted to a person or company holding a Gambling Commission operating licence
7. These notices allow the use of premises for gambling, where there is no premises licence, but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling.
8. The same premises cannot be subject to a TUN for more than 21 days in any 12 month period, but may have more than one TUN in that period provided the 21 days is not exceed.

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Further information on the subject of this report is available from Suzanne Laughland, Licensing Manager on (01432) 261675

9. A temporary use notice must be lodged with the licensing authority not less than 3 months and 1 day before the day on which the gambling event will begin.
10. The notice must be copied to the:
  - Gambling Commission
  - Police
  - HM Revenue & Customswithin 7 days of the date of the notice.
11. The Licensing Authority and the above Responsible Authorities are permitted to make objections in relation to a temporary use notice. Objections must be made within 14 days of the date of the notice, a hearing will then be held to determine the notice.
12. If no objections are received, the event can proceed as applied for. A copy of the notice must then be displayed on the premises for the duration of the event.
13. It is envisaged that it will mostly be the larger commercial enterprises that take advantage of this temporary authorisation. It remains to be seen how prevalently sought after a permission this will be.
14. It is also not possible at this stage to anticipate the volume, frequency and nature of applications or representations against them, and it is therefore not feasible to offer any meaningful costing prediction.

### **Options**

15. There are two options available to the Committee:
  - a) To set the fees at the maximum level allowed under the legislation. (i.e. £500 for a TUN and £25 for a replacement licence).
  - b) To set the fees at some other level below the maximum permitted.
16. **Recommendation**

That the Committee set the fee at the maximum permitted at this time on the understanding that it will be reviewed in 12 months when historic data will be available to review the fees.

**REGULATORY COMMITTEE**  
**LICENSING APPEAL PROCEDURE**

1. Introduction by Clerk to the Panel.
2. Licensing Officer outlines the case.
3. Applicant (or his solicitor) sets out his case.
4. Questions asked by the Panel or Licensing Officer or Applicant.
5. Applicant (or his solicitor) asked if he would like to make further comment or representation, or if he requires time to comment or investigate (if so, Chairman defers application).
6. In dealing with each application, the applicant (and any representative) should also withdraw should be asked to withdraw when they have finished their presentation. All officers, other than the Clerk to the Panel, should also withdraw. It would be preferable for the applicant and officers to await the decision at different locations.
7. If either the applicant or the officer are needed to furnish additional information, they should all be invited back before the Panel. When the additional information has been furnished, they should all be asked to leave again.
8. The Panel can then reach a decision in the usual way, but in the absence of parties.
9. The applicant and officers will then be invited to return. The Chairman will announce the decision. The Chairman should also say that the decision will be communicated in writing in due course, and that the applicant will be informed of any right of appeal (if the decision is a refusal).
10. When the first applicant is finished, that applicant should leave. Deal with the second application the same way.



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